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1953

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Mr. John G. Parsons, Chairman  
New Hampshire Thoroughbred Commission  
Montgomery Park Racetrack

CONCORD, N.H.

Dear Mr. Parsons:

Conway Greitz has referred to me the questions raised in Mr. John L. Tamm's Letter to you of October 20, 1953 as to the rights of the Commission to Requested Recopymization of Tax Structures. I would furnish you certain information on file with the Racing Commission pursuant to the statute relative to the operations of and ownership of the New Hampshire Jockey Club. It is noted that R. I. C. L. 11, c. 12 provides that the annual or biannual of any corporation shall be held at a time which predominant scale shall be signed, sworn to and shall contain, except other information, a statement of assets and liabilities and the names and addresses of Directors and Officers thereof together with such other information as the Racing Commission may require.

The effect of this provision of the law is at least to inform the Director or mission as to the ownership and financial structure of a corporation significant for taxation. As such the information is considered a public record in the sense of involving a written communication by a public officer authorized to perform that function, particularly as it is a semi-public document required to be deposited with the Racing Commission by someone for the information of the Commission and any other governmental agency with a proper interest therein.

In my opinion, the Commission is empowered to request the filing with the Racing Commission with respect to the Jockey Club and other racing authorities of New with respect to the compilation of such records as is entitled to have this information. Holding in this opinion is considered to be contrary to the information furnished to the Commission on January 13, 1953 by the Honorable Francis

November 6, 1953.

W. Johnston, nor the opinion of Honorable Stephen M. Wheeler under date of February 4, 1943.

The New Hampshire Jockey Club was chartered by the State of New Hampshire in 1936 as a business corporation. As such, the common law conferred no right on any other than stockholders to examine the books and records of the corporation, and even the right of the stockholders was limited to inquiries in good faith. Cf. Fletcher, Corporations, Volume 5, sections 2218, 2246. However, under certain circumstances statutory authorization in derogation of this common law principle has been enacted and two illustrations of this are presented by the provisions of R. L. c. 274, s. 51 which provides that creditors of a corporation having an overdue and unpaid demand shall be entitled to inspect its records, accounts and papers at reasonable times and for liquidation purposes, and R. L. c. 171, s. 10 which requires that corporate applicants for licenses to run meets at pari-mutuel pools shall be compelled to furnish information as to its ownership and assets, et al, to the Racing Commission.

This statutory provision concerning the records of the New Hampshire Jockey Club antedated the charter of the Jockey Club. So far as I am able to discern, it is a valid statutory provision having to do with a matter affected with the public interest.

The Commission to Recommend Reorganization of Tax Structure was provided for in the 1953 Session of the Legislature by sections 5 and 6 of chapter 300. Its duty is to act as an advisory commission to cooperate with the Governor in the preparation of recommendations, legislation in substitution or revision of taxes assessed and collected by the State and by all political subdivisions thereof, or paid to any officer, agency or department of the State and to all political subdivisions thereof, if any such is deemed expedient. As such it is entitled to information on file with the Racing Commission which has a direct relation to recommendations which may or may not be made by the Langley Commission effecting legislative consideration of the relationship between the take of the Jockey Club and the take paid to the State of New Hampshire from pari-mutuel betting. Even though information with respect to applicants for licenses under section 10 may not be unlimited public records, the statute neither provides for public inspection nor prohibits it. Since the Langley Commission has an interest in the contents of the records insofar as they affect the overall question of the tax structure of the State of New Hampshire, it is entitled to examine those records.

I therefore respectfully advise you that the request of the Commission for this information should be acceded to by you but in so advising you I express no opinion concerning any right or lack of

Mr. Vernon E. Redman, Chairman -3-

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of the Old Langley Conviction to make the information available to the general public. In any event, that does not appear to be your responsibility.

I am returning to you herewith Chairman Langley's Letter of October 27, 1953.

Very truly yours,

Lewis C. Myrick  
Attorney General

L.C.M:mt

c.c. Governor Gregg

THE STATE OF NEW HAMPSHIRE  
COMMISSION TO RECOMMEND REORGANIZATION  
OF TAX STRUCTURE

3 North State Street  
Concord, N.H.

October 29, 1953.

Mr. Byron E. Redman, Chairman,  
N. H. Racing Commission  
Hampshire, N.H.

Dear Mr. Redman:

I want to thank you and your associates for appearing before our commission to assist us in our task. Since that appearance we have reviewed our program and plan to set a date for a public hearing at which we wish the N. H. Jockey Club and any other interested citizens to appear. Before we do that, however, the Commission to Recommend Reorganization of the Tax Structure would like to be thoroughly informed itself, insofar as it possible, in order that it may most intelligently take evidence at a public hearing.

I believe we asked if you would send us financial statements of the Rockingham Race Track operations, which you promised to do. Thinking about this, it seems to me we should have annual operating statements for the calendar years 1951, 1952, and 1953 to date, as well as balance sheets for those periods. If the fiscal year of the corporation doesn't coincide with the calendar year statements for the years covering the last three meets, including 1953, are desired. We would like full, detailed statements, not brief consolidated statements. If statements to date for 1953 are not available, when could they be had?

Inasmuch as the problem which confronts us here is whether the state is receiving the maximum potential revenue from this source, we would like also to see copies of the corporation income tax returns made to the federal government for the same years.

Could you also provide our commission with enough copies of all rules and regulations your commission has issued under the law so that each of our nine-member commission could have a copy. I believe these are in printed form.

The Commission to Recommend Reorganization of the Tax Structure would also like a list of the stockholder owners of the N. H. Jockey Club, and their addresses, together with the number of shares each stockholder has, and, if possible, the date each acquired his stock.

Again thanking your commission for its courtesies, I remain

Yours sincerely,  
/S/ James M. Langley  
Chairman, Commission to Recommend Reorganization  
of Tax Structure.